

SECOND APPEAL No 73 of 2000

Hon'ble MR.JUSTICE A.R.DAVE

[illegible][illegible]

POPATBHAI KANJIBHAI - DECD. THRO' HEIRS

MR BS SUPEHIA for Respondents Nos.2 & 3

Admit.

At the request of the learned advocates, the appeal is finally heard today.

I have heard learned advocate Shri P.S. Champaneri appearing for the appellant and learned advocate Shri Supehia for respondents Nos. 2 and 3 i.e. the original plaintiffs. So far as respondent No.1 is concerned, he has not been represented, but in view of the fact that, at the request of the learned advocates and with their consent, the decree passed in the appellate court is set aside, presence of respondent No. 1 is not required. It may also be noted here that in fact respondent No. 1, who is original defendant No. 2, had challenged the decree passed by the trial court and had prayed for an order of remand. The appeal was dismissed and as, by virtue of this judgment, the order passed in appeal is quashed and set aside, in my opinion, no harm would be caused to respondent No. 1 even if he is not represented before this court.

After the matter was heard for some time, the learned advocates had agreed that some further evidence ought to have been adduced before the trial court. In the circumstances, the judgment and decree passed by the Asst. District judge in Regular Civil Appeal No. 65/94 dated 24.11.1999 confirming the judgment and decree passed in Regular Civil Suit No. 207/86 passed by the 3rd Jt. Civil Judge (S.D.), Surendranagar, is quashed and set aside.

The judgment and decree referred hereinabove passed by the appellate court as well as by the trial court are quashed and set aside and the trial court is directed to permit the parties to adduce further evidence and decide the suit afresh. If necessary, it would be open to the trial court to frame new issues after perusal of the pleadings.

It is hoped that the suit shall be concluded as soon as possible and preferably within six months. In the meantime, it is directed that on the suit properties, the original defendants shall not put up any further construction.

The appeal is accordingly allowed with no order as to costs.

(hn)